IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3823 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATPATSINH @ NAPO PRABHATSINH THAKORE

Versus

THE COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 3823 of 2001

MS KRISHNA U MISHRA for Petitioner No. 1

MR SS PATEL AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 16/10/2001

ORAL JUDGEMENT

1. In exercise of powers under Section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Vadodara City, Vadodara, vide order dated March 22, 2001, Annexure

A to the petition, detained the petitioner - detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a bootlegger within the meaning of section 2 (b) of the Act as two cases under the Prohibition Act are registered against him which are pending investigation and statements of three witnesses are also recorded against him, therefore, according to the detaining authority the activities of the petitioner are prejudicial to the maintenance of public order and hence powers under Section 9 (2) of the Act are exercised by the detaining authority by not disclosing the identity of the witnesses while detaining the petitioner.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing the impugned order of detention and setting him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Ms. K.U. Mishra, learned advocate for the petitioner has restricted her arguments on the point that relevant document referred to and relied upon by the detaining authority while passing the impugned order of detention is not supplied to the detenu and, therefore, continued detention of the petitioner has become illegal. To buttress the above arguments, she drew the attention of the Court to para 6 of the grounds of detention wherein it is stated that the proceedings under Section 56 of the Bombay Police Act ('the BP Act' for short) are initiated against the petitioner for externing him and notice under Section 59 (1) of the BP Act was also served upon him but the said proceedings are found insufficient to curb the antisocial activities of the petitioner. According to the learned advocate for the petitioner, copy of the said notice is not supplied to the petitioner and, therefore, non-supply of the important document which has been referred to and relied upon by the detaining authority has seriously prejudiced the right of the petitioner of making an effective representation and infirmity in this regard is violative of the constitutional safeguard enshrined in Article 22 (5) of the Constitution and, therefore, she urged to allow the petition by quashing and setting aside the impugned order of detention and setting the petitioner at liberty forthwith.

5. Mr. S.S. Patel, learned AGP who appears on behalf of the respondents contested the petition by filing affidavit in reply sworn by the Commissioner of Police, Vadodara City, Vadodara. However, he does not dispute the factual aspect with respect to the observation made by the detaining authority in para 6 of the grounds of detention. He, therefore, urged to pass appropriate orders.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. On having perusal of para 6 of the grounds of detention, it is seen that the detaining authority has observed in its order that in spite of the fact that proceedings under Section 56 of the BP Act are pending against the petitioner and notice under Section 59 (1) of the BP Act was served upon him, he continued to indulge in antisocial activities and, therefore, proceedings under Section 56 of the BP Act are found insufficient and it has become necessary to detain him.

8. On having perusal of the index of the documents which are supplied to the petitioner alongwith the grounds of detention, it is clear that copy of the notice under Section 59 (1) of the BP Act is not annexed therewith. Therefore, there is no dispute that the said document has not been supplied to the petitioner - detenu.

9. The Supreme Court in the case of Mohd. Zakir v. Delhi Administration and others, AIR 1982 SC 696 held that if the documents relied on by the authorities are not supplied with grounds of detention, the order of detention is illegal. It is further held that it is a constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari passu in grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with. It is manifest that question of demanding the documents is wholly irrelevant. The infirmity in this regard is violative of constitutional safeguard enshrined in Article 22 (5) of the Constitution.

10. Applying the principles laid down by the Supreme Court in Mohd. Zakir's case (supra) to the facts of the present case, at the cost of repetition, be it stated

that the document, that is, notice under Section 59 (1) of the BP Act which was referred to and relied upon by the detaining authority while passing the impugned order of detention has admittedly not been supplied to the petitioner which has seriously prejudiced the right of the petitioner of making an effective representation and infirmity in this regard is violative of constitutional safeguard enshrined in Article 22 (5) of the Constitution, therefore, continued detention of the petitioner has become illegal and on this sole ground the petition deserves to be allowed by quashing and setting aside the impugned order of detention and setting the petitioner at liberty forthwith.

11. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M. Kapadia, J.)

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